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## **Governor would consider EPA Superfund request for mines if local officials get behind designation**

9/3/2015 By David O. Williams

Gov. John Hickenlooper would consider requesting that abandoned mines near Silverton be designated an EPA Superfund site and placed on the National Priority List if there's enough local support, a spokeswoman told The Colorado Statesman this week.

"The governor would certainly consider making the request [to the EPA] if there is broad local community support," Hickenlooper spokeswoman Kathy Green said, adding that the governor has had several talks with local officials and the EPA Superfund topic has come up.

Following last month's accidental blowout caused by EPA contractors at the Gold King Mine that released 3 million gallons of acid mine drainage into Cement Creek and then the Animas River, there's growing local discussion of Superfund listing. For many years the mere suggestion of a Superfund cleanup raised local hackles and met resistance because of its perceived stigma.

The same amount of contaminated water that was discharged suddenly on Aug. 5, when workers breached a dammed mining tunnel, is flowing out of the Gold King approximately every four days and has been for years, according to the EPA, which puts the current discharge rate at between 500 and 600 gallons per minute.

State and federal officials say three more mines near Gold King — Sunnyside, Mogul and the Red and Bonita — are cumulatively discharging more acidic mine drainage, laden with heavy metals such as lead, zinc, cadmium and copper, than the Gold King. That contamination, dating back to the late 19th Century, has rendered the upper drainage devoid of aquatic life.

"Everything's on the table: EPA Superfund or other remedies," Silverton Town Administrator Bill Gardner told The Statesman on Wednesday. "We've got to find something that works, and the most important thing is that we do it right, and we do it right the first time so this doesn't become some prolonged study and analysis and not taking action."

EPA officials say NPL listing, which on average takes about six months from initial proposal if a site qualifies, can bring millions of dollars of federal funding into play for remediation, but it has to have local support.

"The Gold King Mine site has never been proposed to be listed on the National Priority List (NPL)," the EPA states on its website. "At this time we haven't received any requests from the

governor to propose listing this site on the NPL, which we look for as part of the agency's policy and practice."

One thing local officials don't support is suing the EPA, which the Navajo Nation — downstream from the Animas along the San Juan River in northern New Mexico — is preparing to do. Colorado Attorney General Cynthia Coffman also is considering legal action against the EPA.

"Absolutely not," Gardner said. "I think that's the worst thing that we as a community could be involved in. What we're interested in is partnering with the EPA and whatever other federal and state organizations are necessary to find a solution. Legal action is only going to delay any kind of real results."

U.S. Sen. Cory Gardner, a Republican, late last week issued a press release applauding a Senate Environment and Public Works Committee hearing on the EPA's handling of the Aug. 5 blowout, which will include testimony from EPA administrator Gina McCarthy.

"The EPA caused this spill, and their completely inadequate response has left Coloradans with more questions than answers," said Gardner, who is no relation to the Silverton official. "I'm continuing to closely monitor the situation in the Animas River and surrounding communities, and I look forward to hearing answers from the EPA."

Silverton's Gardner said the EPA is "doing quality work up at the site itself to get us through this winter," building holding ponds that are slowing the discharge of acid mining drainage so contaminants can settle and pH levels can be lowered. He said town and San Juan County staff will meet with the EPA on Friday to discuss more permanent solutions, such as a water treatment facility or other high-tech fixes for a problem that has plagued the drainage for decades.

State health officials, who on Wednesday announced that testing revealed trout from the Animas River are again safe to eat, are in favor of EPA Superfund listing.

"The Hazardous Materials and Waste Management Division has very limited authority and funding outside of the Superfund process," CDPHE spokesman Mark Salley told The Statesman. "The most likely way sufficient funds will be available to address the issue is by listing the site on the NPL."

Silverton and San Juan County officials are seeking federal disaster funds after Hickenlooper already made an official state disaster declaration, sending \$500,000 in assistance.

Professor Mark Squillace, who specializes in environmental, natural resources and water law at the University of Colorado Law School, said the heated political rhetoric needs to be removed from the discussion.

"It's fair to say that the Republicans have blocked efforts to set up a reclamation fund for these abandoned mines," Squillace said, referring to the lack of congressional action on the 1872 Mining Act. Proposals to reform the law would establish a system of royalties for mining on

public lands and use that revenue to set up a clean-up fund. “If the state were to sue over this, it would tend to politicize an issue that needs to be addressed in a more bipartisan and constructive way than litigation is likely to achieve.”

Squillace adds that Superfund listing could get private mine owners to contribute to the cleanup, easing the burden on taxpayers.

“It’s not just a federal fund that would have pay for the cost of the cleanup, but it’s also private parties that have some responsibility for creating the mess in the first place,” Squillace said.

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